No. 918

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IN THE

Supreme Court of the United States

OCTOBER TERM, 1963

EVANSTON CAB CO., A corporation,
SKOKIE RED TOP CAB CO., A corporation,
LINCOLNWOOD RED TOP CAB CO., A corporation,
Petitioners,

vs.

CITY OF CHICAGO, A Municipal Corporation,
YELLOW CAB CO., A Corporation,
CHECKER TAXI, INC., A corporation,
FLASH CAB CO., A corporation,
PUBLIC TAXI SERVICE, INC., A corporation,
ABERNATHY TAXI ASSOCIATION INC., A corporation,
SOUTH SIDE CAB CO., A corporation,
HIGHLAND CAB COMPANY, INC., A corporation,
COMMERCIAL CAB CO., A corporation,
BERTEL W. DAIGRE,
AMERICAN UNITED CAB ASSOCIATION, an incorporated Association,
JACK TAYLOR, individually and as President of the Defendant American United Cab Association,
PETE BARBERO, individually and as Secretary of the Defendant American United Cab Association,
JOHN C. MELANIPHY,
JAMES Y. CARTER,
RAY SIMON,
THOMAS J. COONEY,
Respondents.

On Petition for Writ of Certiorari to the United States Court of Appeals for the Seventh Circuit

PETITION FOR WRIT OF CERTIORARI

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RAY SIMON,
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PETITION FOR WRIT OF CERTIORARI

Petitioners pray that a writ of certiorari issue to review the judgment of the United States Court of Appeals for the Seventh Circuit entered in the above entitled case on December 18, 1963.

Citations to Opinions Below

The opinion of the United States Court of Appeals, printed in Appendix A hereto, *infra* App. p. 1, is reported at 325 F. 2d 907.

Jurisdiction

The judgment of the United States Court of Appeals for the Seventh Circuit was entered on December 18, 1963. The jurisdiction of this Court is invoked under 28 U.S.C., Section 1254 (1).

Questions Presented

Whether a restraint of trade in and monopolization of taxicab service at Chicago-O'Hare International Airport is in violation of Sections 1 and 2 of the Sherman Act, 15 U.S.C., Sections 1 and 2; where that airport is the primary interstate airport in an area containing 6,700,000; and where all deplaning passengers must take some further transportation in order to arrive at their final destinations in the Chicago Metropolitan Area; and where a stoppage or other restraint, burden or monopolization of taxicab service would result in a substantial interruption to or interference with the free flow of commerce.

2. Does an ordinance of the City of Chicago which requires a corporate applicant for taxicab licenses to have its principal place of business within the City of Chicago, and which thus prevents a non-resident corporation from obtaining City of Chicago taxicab licenses, deny to such non-resident corporations due process of law and the equal protection of the laws as guaranteed by the Fourteenth Amendment to the Constitution of the United States.

Statutes Involved

The statutes involved are Sections 1 and 2 of the Sherman Act, 15 U.S.C., Sections 1 and 2; Sections 4 and 16 of the Clayton Act, 15 U.S.C., Sections 15 and 26; and Municipal Code of Chicago, Chapter 28, Sections 28-1, 28-2, 28-3, 28-5, 28-5.1, 28-6 and 28-32. The foregoing statutes are reprinted in full in Appendix B hereto, *infra* App. p. 13.

Statement of the Case

The petitioners filed a suit in the United States District Court for the Northern District of Illinois, Eastern Division, seeking monetary damages and injunctive relief against the respondents for violations of the Anti-Trust Laws of the United States. Jurisdiction of the District Court was invoked because the case arises under Sections 4 and 16 of the Clayton Act. (15 U.S.C., Sections 15 and 26.) The opinion of the Court of Appeals fairly adequately summarizes the facts of the case:

> Evanston Cab Co., Skokie Red Top Cab Co., and Lincolnwood Red Top Cab Co., Illinois corporations, plaintiffs, brought an action against the City of Chicago, a municipal corporation, defendant, and the other defendants above-named, in the district court, under the Clayton Act, 15 U.S.C.A. §§ 15, 26, and the Sherman Act, 15 U.S.C.A. §§ 1, 2.[1]
>
> On motion of defendants, the action was dismissed at plaintiffs' costs. This appeal followed.

[1] The last four defendants named are respectively the following officials of the City of Chicago: corporation counsel, public vehicle license commissioner, aide to the mayor, and a police officer assigned to duty in the office of the Public Vehicle License Commissioner.

The relevant facts as shown by the pleadings we set out in condensed form.

Chicago-O'Hare International Airport is an airport owned by the defendant City of Chicago and is the primary scheduled airline airport for the Chicago Metropolitan area consisting of the counties of Cook, Lake, DuPage, McHenry, Kane and Will, in the State of Illinois, and the counties of Lake and Porter in the state of Indiana. O'Hare is twenty-three miles from downtown Chicago and until March 28, 1956 was not within the incorporated area of the City of Chicago. On that date it was annexed to the city. Physically it is completely separated from the rest of the corporate area of the city except for a connecting strip of Higgins Road and East River Road. All but a very small portion of passengers arriving at O'Hare in scheduled airline planes originate their flights outside the State of Illinois.

Plaintiffs are respectively engaged in the operation of taxicabs in the municipalities of Evanston, Skokie and Lincolnwood, in suburban Cook County.

The complaint alleges that 6,700,000 persons live in the Chicago metropolitan area and that all persons completing flights at O'Hare *engage* some form of *further* transportation to take them to their ultimate destination in the Chicago Metropolitan Area. To provide this further transportation the Chicago Helicopter airways has scheduled flights between O'Hare, Midway Airport, downtown Chicago, Gary, Indiana and Winnetka, Illinois. All other public transportation in interstate commerce of persons completing flights at O'Hare to their final destinations in the Chicago Metropolitan Area is by taxicab.[2]

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[2] In addition Continental Air Transport Co., Inc., operates bus service between O'Hare, Midway Airport, downtown Chicago, Evanston, Illinois and Oak Park, Illinois.

The complaint charges that defendant taxicab concerns and other defendants conspired among themselves and with others to eliminate and restrict competition in the providing of taxicab service at O'Hare, by ratifying a prior prohibition of the plaintiffs from providing taxicab service to persons traveling in interstate commerce completing their flights at O'Hare, and by agreeing to prohibit all persons from providing such service in the regular taxi line except the cab company defendants and other taxicabs licensed by the City of Chicago, and further agreed to permit the plaintiffs to render taxi service at O'Hare only when specifically contracted for by letter, telegram or telephone prior to rendering such service, thus placing the plaintiffs at a distinct competitive disadvantage.

The complaint further charges that the city council of defendant city enacted an ordinance effectuating said agreements and that it and certain other ordinances, copies of which are attached to the complaint, which limit plaintiffs in providing taxi service at O'Hare, are therefore unreasonable, discriminatory and deprive plaintiffs of their property without due process of law, contrary to the fourteenth amendment to the constitution of the United States.

The complaint further charges that the conspiracy and ordinance "actually restrain, burden and monopolize interstate commerce".

Plaintiffs seek recovery of damages for losses sustained by reason of the facts charged, relying on §§ 4 and 16 of the Clayton Act, 15 U.S.C.A. §§ 15, 26, and §§ 1 and 2 of the Sherman Act, 15 U.S.C.A. §§ 1, 2.

To substantiate the allegations of conspiracy to restrain trade and monopolize taxicab service at O'Hare Airport, the petitioners raised the question of the validity of the

Chicago Taxicab ordinance provisions which prohibit non-resident corporations from obtaining Chicago taxicab licenses and thus enhances the defendants monopoly. This portion of the case is identical with the question presented in *Yokes* v. *City of Chicago*, now before this Court on Appeal from the Supreme Court of Illinois, Case Number 855, October Term, 1963. In the *Yokes* case the appellants were drivers of two of the three taxicab companies which are the plaintiffs in this case.

The United States Court of Appeals affirmed the order of the District Court dismissing the complaint upon the authority of *United States* v. *Yellow Cab Co.*, 332 U.S. 218 (1947); and upheld the validity of the Chicago taxicab ordinance provisions upon the authority of *City of Chicago* v. *Yokes*, 28 Ill. 2d 475.

Reasons for Granting Writ

1. The first question presented in this case consists in part of the one which was recognized by the dissenters but which the Court left unanswered in *United States* v. *Employing Plasterers' Assn.*, 347 U.S. 186, and *United States* v. *Employing Lathers' Assn.*, 347 U.S. 198. That question is whether the "affects interstate commerce" test of the applicability of the antitrust laws is the same "affects interstate commerce" test which is applied under the Labor-Management Relations Act of 1947 (Taft-Hartley) 29 U.S.C., Section 14, or the Fair Labor Standards Act, 29 U.S.C., Sections 201, *et seq.* The first question presented also contains the one left unanswered by this Court in *United States* v. *Yellow Cab Co.*, 332 U.S. 218 when the Court said:

> * * * Likewise, we are not to be understood in this case as deciding that all conspiracies among local cab drivers are so unrelated to interstate commerce as to fall outside the federal ken. A conspiracy to burden or eliminate transportation of passengers to and from a railroad station where interstate journeys begin and end might have sufficient effect upon interstate commerce to justify the imposition of the Sherman Act and of other federal laws resting on the commerce power of Congress.

The Court of Appeals' reliance upon the more restrictive provisions of the *Yellow Cab* case clearly evidences its refusal to expand the antitrust laws into the areas which this Court indicated did come under them; *i.e.* the case in which taxicab service at one major terminal of interstate transportation is monopolized or restrained. The Court of Appeals ignored that portion of the *Yellow Cab* case and decided this case as general local taxicab service.

Thirdly there is presented the broad question as to whether the Yellow Cab doctrine, establishing the lack of applicability of the federal anti-trust laws to local taxicab service, has been or should be overruled.

All three aspects of the first question present important questions of federal law which have not been, but should be, settled by this Court.

The *Yellow Cab* case has been if not expressly overruled at least impliedly in the case of *United States* v. *Employing Plasterers' Assn.*, 347 U.S. 186, 74 S. Ct. 452, 98 L.Ed. 618 and *United States* v. *Employing Lathers' Ass'n.* 347 U.S. 198, 74 S. Ct. 455, 98 L.Ed. 627. In the *Plasterers'* case Mr. Justice Black, speaking for the Court said: (74 S. Ct. 452, 454.)

> . . . [T]he complaint alleged that continuously since 1938 a local group of people were to a large extent able to dictate who could and who could not buy plastering materials that had to reach Illinois through interstate trade if they reached there at all. Under such circumstances it goes too far to say that the Government could not possibly produce enough evidence to show that these local restraints caused unreasonable burdens upon the free and uninterrupted flow of plastering materials into Illinois. That wholly local business restraints can produce the effects condemned by the Sherman Act is no longer open to question. See, e.g. *United States* v. *Women's Sportswear Manufacturers Ass'n.* 336 U.S. 460, 464, 69 S. Ct. 714, 93 L. Ed. 805.

In the *Lathers* case Mr. Justice Black, again speaking for the Court said: (74 S. Ct. 455, 456.)

> The complaint charges that an effect of the alleged combination and conspiracy has been that "'[i]nterstate trade and commerce in lathing and related building materials has been unlawfully restrained.'" Other

allegations emphasize this charge by asserting that any restraint upon lathing work in Chicago "necessarily and directly restrains and affects the interstate flow of lathing materials, and * * * building materials * * *."

The complaint does state a cause of action on which relief can be granted on proper proof.

The full import of these two decisions is pointed up in the dissent of Mr. Justice Minton with whom Mr. Justice Douglas concurred: (74 S. Ct. 457)

> The government does not and could not contend that building is commerce. It contends that the appellee's act affect commerce relying upon such cases as *National Labor Relations Board* v. *Denver Building & Const. Trades Council*, 341 U.S. 71 S. Ct. 943 95 L. Ed. 1284, and *Walling* v. *Jacksonville Paper Co.*, 317 U.S. 564, 63 S. Ct. 332, 87 L. Ed. 460. But those cases arose under different statutes, the sweep of which is broader than that of §1 of the Sherman Act, which declares illegal only those contracts, combinations and conspiracies "in restraint of trade or commerce among the several States." The *Denver Council* case arose under the Labor Management Relations Act, 29 U.S.C. § 151 *et seq.*, which provides:
>
> > "Sec. 10. (a) The Board is empowered, as hereinafter provided, to prevent any person from engaging in any unfair labor practice (listed in section 8) affecting commerce: * * *" 61 Stat. 146, 29 U.S.C. § 160, (a) 29 U.S.C.A. § 160(a).
>
> Section 2 of that Act defines "affecting commerce" as follows:
>
> > "(7) The term 'affecting commerce' means in commerce, or burdening or obstructing commerce or the free flow of commerce, or having led or tending to lead to a labor dispute burdening or obstructing commerce or the free flow of commerce." 61 Stat. 138, 29 U.S.C. § 152(7), 29 U.S.C.A. § 152(7).

The *Jacksonville Paper* case arose under the Fair Labor Standards Act, 29 U.S.C.A. § 201 *et seq.*, which is applicable to "employees who [are] engaged in commerce or in the production of goods for commerce • • • •." 52 Sat. 1062, 29 U.S.C. § 206, 29 U.S.C.A. § 206. Furthermore, that case dealt with transactions that took place in the stream of commerce. Compare *Higgins* v. *Carr Bros.*, 317 U.S. 572, 63 S. Ct. 337, 87 L. Ed. 468. In the instant cases the stream of commerce stops at the building site.

It is apparent from the reading of the opinions of the *Plasterers* case and the *Lathers* case that the test of the applicability of the Sherman Act is whether the activity complained of affects commerce. This test is not wholly lacking in the *Yellow Cab* case itself, for there the Court made clear: (67 S.Ct. 1560, 1568)

> We do not mean to establish any absolute rule that local taxicab service to and from railroad stations is completely beyond the reach of federal power or even beyond the scope of the Sherman Act. In *Stafford* v. *Wallace*, *supra*, 258 U.S. at page 528, 42 S. Ct. at page 406, 66 L. Ed. 735, 23 A.L.R. 229, the Court made plain that nothing in the *Knight* case was authority for the proposition that "if such an agency [local cab service] could be and were used in a conspiracy unduly and constantly to monopolize interstate passenger traffic, it might not be brought within federal restraint." Likewise, we are not to be understood in this case as deciding that all conspiracies among local cab drivers are so unrelated to interstate commerce as to fall outside the federal ken. A conspiracy to burden or eliminate transportation of passengers to and from a railroad station where interstate journeys begin and end might have sufficient effect upon interstate commerce to justify the imposition of the Sherman Act and of other federal laws resting on the commerce power of Congress.

The completion of the extinction of the *Yellow Cab* case as controlling in this area was accomplished with little fanfare in a *per curiam* order of this Court in *Superior Court of State of Washington for King County* v. *State of Washington on the Relation of Yellow Cab Service, Inc.*, 361 U.S. 373.

The prelude to this order, in a case in which not only was certiorari granted 360 U.S. 928 but the Solicitor General invited to file a brief setting forth the views of the National Labor Relations Board, 361 U.S. 862, was the opinion of the Supreme Court of Washington in *State of Washington on the Relation of Yellow Cab Service* v. *The Superior Court for King County*, 53 Wash. 2d 644. To establish its full import we quote the following pertinent passages:

> This is an application for a writ of mandate sought by the relator, Yellow Cab Service, Inc., a Washington corporation, to direct the superior court of King County to take jurisdiction of its action against the International Brotherhood of Teamsters (hereinafter referred to as the union) to enjoin the picketing of its premises. The union successfully attacked the superior court's jurisdiction over the relator's action on the ground that the only proper forum was the National Labor Relations Board.
>
> . . . . . .
>
> The merits of this case were never determined in the superior court, due to that court's decision that it did not have jurisdiction to proceed with the case. The superior court decided that the Yellow Cab system was in interstate commerce and that the case presented a labor dispute affecting interstate commerce over which the National Labor Relations Board would have jurisdiction. Relying on *Guss* v. *Utah Labor Relations Board* (1957), 353 U.S. 1, 1 L. Ed. 2d 601, 77

S. Ct. 598, the superior court held that the federal jurisdiction over this case was exclusive and pre-empted the state court's jurisdiction.

The National Labor Relations Act empowers the National Labor Relations Board "to prevent . . . any person from engaging in any unfair labor practice . . . affecting commerce." 49 Stat. 453, 29 U.S.C.A. § 160 (a). The definition of the term "affecting commerce" is given as follows, at Stat. 450, 29 U.S.C.A. § 152(7):

> "The term 'affecting commerce' means in commerce, or burdening or obstructing commerce or the free flow of commerce, or having led or tending to lead to a labor dispute burdening or obstructing commerce or the free flow of commerce."

The Yellow cabs are based in the City of Seattle and operate almost entirely within King county. In order to establish that they are in interstate commerce, the union relies upon the buisness these taxicabs do in picking up and delivering passengers at the railroad terminals, airports, and passenger steamship docks. The total gross revenues received by all of the hundred and eighteen taxicab operating corporations from July 1, 1957, through June 30, 1958, was $1,429,914.02. Gross revenues received from picking up passengers from the Seattle airports were $144,460.80 from Seattle-Tacoma Airport and $14,601.60 from King County Airport (Boeing Field). An estimate was made at the trial that this constituted seventy per cent of the full business of these taxicabs in serving these airports. The remaining thirty per cent involving trips to the airports. Not all of these gross revenues came from passengers traveling interstate, however it appears that a substantial portion did.

No similar accounting was made concerning the gross revenues derived from servicing the railroad terminals or the passenger steamship docks, except

for a relatively few passengers who on prearranged tours, arrived at railroad terminals and took taxicabs directly to the Canadian Pacific docks, paying their taxicab fare by coupon. The gross revenues from the coupons received from these travelers totalled just $1,436.55 during the accounting year (approximately one tenth of one per cent of the gross revenues).

A taxicab company having relatively the same scope of business was considered by the Supreme Court of the United States in *United States* v. *Yellow Cab Co.* (1947), 332 U.S. 218, 91 L. Ed. 2010, 67 S. Ct. 1560. That case concerned the sufficiency of a complaint brought under the Sherman Antitrust Act, involving, among other things, monopolistic practices in the Chicago taxicab fleet. The court held that the Sherman Act did not apply to the Chicago taxicab business because this manner of transportation was too predominantly a local activity to constitute an integral part of interstate commerce. The court held that,

> "... When local taxicabs merely convey interstate train passengers between their homes and the railroad stations in the normal course of their independent local service, that service is not an integral part of interstate transportation. ..." 332 U.S. at 233.

The task of drawing the line which bounds interstate commerce is anything but simple. *United States* v. *Yellow Cab Co., supra*, has drawn such a line, however, and we consider its holding to be an appropriate authority for the position we here take.

At this point the court interjected the following footnote:

> That *United States* v. *Yellow Cab Co., supra*, was decided under the Sherman act does not make it less an authority in the instant case. In that case, as in this one the issue was whether there was any appreciable aspect of interstate commerce involved in the city's taxicab business. ...

Quoting one last pertinent paragraph from the decision of the Supreme Court of Washington:

> We do not believe that whatever unfair labor practice may be present in this case can possibly be said to be "burdening or obstructing commerce" (see 49 Stat. 450, 29 U.S.C.A. §152(7), quoted above). There is no testimony in the record that this picketing has impaired taxicab service to or from the railroad terminals, airports, and docks, and hence no evidence of any effect upon interstate commerce sufficient to justify the application of the National Labor Relations Act. *United States* v. *Yellow Cab Co.*, *supra*. No such circumstances is present in this case.

In answer to all of the above language the Supreme Court of the United States merely said: (361 U.S. 373)

> The judgment is reversed. *San Diego Building Trades Council* v. *Garmon*, 359 U.S. 236.

The *Garmon* case is one of a series of cases in which this Court was faced with the problems created by the failure of the National Labor Relations Board to take jurisdiction in labor disputes in industries which affect interstate commerce. The background was expressed in *Guss* v. *Utah Labor Relations Board*, 353 U.S. 1, 3, 4, 77 S. Ct. 598, 599, 1 L.Ed. 2d 601.

> Some background is necessary for an understanding of this problem in federal-state relations and how it assumed its present importance. Since it was first enacted in 1935, the National Labor Relations Act has empowered the National Labor Relations Board "to prevent any person from engaging in any unfair labor practice * * * [defined by the Act] affecting commerce." By this language and by the definition of "affecting commerce" elsewhere in the Act, Congress meant to reach to the full extent of its power under the Commerce Clause. *National Labor Relations Board* v. *Fainblatt*, 306 U.S. 601, 606-607, 59 S. Ct. 668, 672,

83 L. Ed. 1014. The Board, however, has never exercised the full measure of its jurisdiction. For a number of years, the Board decided case-by-case whether to take jurisdiction. In 1950, concluding that "experience warrants the establishment and announcement of certain standards" to govern the exercise of its jurisdiction, *Hollow Tree Lumber Co.*, 91 N.L.R.B. 635, 636, the Board published standards, largely in terms of yearly dollar amounts of interstate inflow and outflow. In 1954, a sharply divided Board, see *Breeding Transfer Co.*, 110 N.L.R.B. 493, revised the jurisdictional standards inward. This Court has never passed and we do not pass today upon the validity of any particular declination of jurisdiction by the Board or any set of jurisdictional standards.

How many labor disputes the Board's 1954 standards leave in the "twilight zone" between ex[illegible] federal jurisdiction and unquestioned state jurisdiction is not known. In any case, there has been recently a substantial volume of litigation raising the question stated at the beginning of this opinion, of which this case is an example.

Decided the same day as the *Guss* case was the predecessor of the *Garmon* case relied upon by the Court in the case of *Superior Court of State of Washington etc.* In the first *Garmon* case, *San Diego Building Trades Council v. Garmon*, 353 U.S. 26, 77 S.Ct. 607, 1 L.Ed.2d 618, there was no doubt that the business involved affected interstate commerce. In fact the plaintiff in that case was the employer who commenced the action to enjoin the union from picketing on the basis that the employer was in interstate commerce and the contract sought by the unions would violate the National Labor Relations Act. Following the *Guss* case this Court held that the employer was in the so-called twilight zone wherein the labor relations were solely controlled by Congress but wherein the NLRB refused to accept jurisdiction. The Court reversed the de-

cision of the state court granting an injunction against the picketing, holding that the jurisdiction in the NLRB was exclusive, regardless of whether they exercised that jurisdiction or not. The Court remanded the case to the state court for the purpose of determining whether the damages which had also been awarded the employer were based on state or Federal grounds. The state court determined the damages were awarded under state tort law. Again certiorari was granted and upon the merits the Supreme Court decided that as to the issue of damages the Federal Act had also pre-empted the field of labor relations in a business affecting interstate commerce.

By holding that the state courts were powerless to determine whether an unfair labor practice existed or to remedy it if it did and by relying on *Guss v. Utah Labor Relations Board*, 353 U.S. 1, 77 S. Ct. 598, 1 L. Ed. 2d 601, *Amalgamated Meat Cutters, etc.* v. *Fairlawn Meats*, 353 U.S. 20, 77 S. Ct. 604, 1 L. Ed. 2d 613, and *Garner* v. *Teamsters, etc. Union*, 346 U.S. 485, 74 S. Ct. 161, 98 L. Ed. 228, the Court clearly inferred in the *Garmon* case that it was only because the business involved affected interstate commerce that the state courts had no jurisdiction.

Returning to the *Superior Court of State of Washington for King County* v. *State of Washington on the Relation of Yellow Cab Service, Inc.*, 361 U.S. 373, 80 S.Ct. 400, we at once see that the Supreme Court of Washington could not have been reversed on the basis of the second *Garmon* case had not the business involved affected interstate commerce.

Even closer to the business involved in this case is the adjudication by the National Labor Relations Board in *Checker Taxi Company, Inc.*, 131 N.L.R.B. 611. There the Board without comment adopted the finding of the trial examiner that Checker Taxi Company, Inc., and Yellow Cab

Company, which are the same companies as are respondents in this case, are engaged in commerce within the meaning of the National Labor Relations Act. The following extract from the trial examiner's report is most appropriate to the present case: 131 N.L.R.B. 611, 636.

FINDINGS OF FACT

I. The Business of the Respondents Checker and Yellow

The Respondent Yellow is a Maine corporation, having its principal office and place of business in Chicago, Illinois, where it is engaged in the business of transporting the general public for hire in taxicabs. The complaint contends and the answer admits that during the calendar year 1958 the Respondent Yellow: (1) Purchased and received in Illinois vehicles, gasoline and related products valued at more than $1,500,000 which were shipped directly from points outside the State of Illinois; and (2) during the same period received revenue in excess of $1,000,000 from the general public using its facilities.

The Respondent Checker is a New York corporation, having its principal office and place of business in Chicago, Illinois, where it is engaged in the business of transporting the general public for hire in taxicabs. The complaint contends and the answer admits that during the calendar year 1958 Respondent Checker: (1) Purchased and received in Illinois vehicles, gasoline and related products valued at more than $1,000,000 which were shipped directly from points outside Illinois; and (2) during the same period received revenue of more than $1,000,000 from the general public using its facilities.

Without more, in the opinion of the Trial Examiner, the Board's jurisdictional requirements as to each of the Respondent Companies have been met. Contrary to the contentions of the Respondents, it is concluded and found that said Respondents are engaged in commerce within the meaning of the Act and that, as the

> court said in *N.L.R.B.* v. *Baltimore Transit Company, et al.*, 140 F. 2d 51 (C.A. 4), a "stoppage of its [their] operations by threatened industrial strife would result in substantial interruption to or interference with the free flow of commerce."

In sum, then, taxicab industry in the Chicago Metropolitan Area as is alleged in the complaint does have a substantial effect upon interstate commerce.

The question thus raised is whether that test, *i.e.* affecting interstate commerce, brings the activities involved within the scope of the Sherman and Clayton Acts. As the dissents in the *Employing Plasterers* and *Employing Lathers* cases, pages 9 and 10 *supra*, clearly demonstrate, that is the holding of those cases, if not directly stated. An analysis of several antitrust cases also shows that that test is applicable. We have seen that the power of Congress to regulate commerce among the several states includes the power to regulate businesses in which a curtailing of their operations by such as a labor dispute would result in a substantial interruption to or interference with the free flow of commerce. The antitrust laws of the United States have been repeatedly construed in such a manner as to effectuate the intention of Congress to exercise its full power over interstate commerce. *U. S.* v. *Frankfort Distilleries*, 324 U.S. 293, 65 S.Ct. 661, 89 L.Ed. 951; *U. S.* v. *Southeastern Underwriters Ass'n*, 322 U.S. 533, 64 S.Ct. 1162, 88 L.Ed. 1440; *U. S.* v. *Chrysler Corp.*, 9 Cir., 180 F.2d 557. In *Atlantic Cleaners & Dyers* v. *United States*, 286 U.S. 427, 52 S.Ct. 607, 76 L.Ed. 1204, the Supreme Court said: (286 U.S. 427, 435)

> A consideration of the history of the period immediately preceding and accompanying the passage of the Sherman Anti-Trust Act and of the mischief to be remedied, as well as the general trend of debate in both

> houses, sanctions the conclusion that Congress meant to deal comprehensively and effectively with the evils resulting from contracts, combinations, and conspiracies in restraint of trade, and to that end to exercise all the power it possessed.

Thus, if industrial strife in the taxicab industry results in a substantial interruption to or interference with the free flow of commerce and Congress has the power to regulate labor disputes in that industry to prevent such strife, it must therefore follow that Congress also has the power to prevent a monopolization or contracts, combinations and conspiracies in restraint of trade in the taxicab industry which likewise would result in substantial interruption to or interference with the free flow of commerce. Congress having exercised all the power it possessed, the Sherman and Clayton Acts are applicable to the business involved in this case.

2. The second question which is raised by this petition is the one which is also raised in *Vokes v. City of Chicago*, Case Number 855, October Term, 1963.[3] Without wishing to burden the Court, we here present the arguments raised there in order to permit parties who are not parties in that case to answer them. In the jurisdictional statement in that case, the appellants, drivers for two of the three plaintiff companies showed that the present Chicago taxicab licensing ordinance is invalid because it discriminates nonresident corporations.

The Supreme Court of Illinois, in its decision in that case, ignored not only the great body of law from other jurisdictions but also its own precedents.

The leading Illinois case is *City of Elgin v. Winchester*, 300 Ill. 214; 133 N.E. 205. In that case the City of Elgin had enacted an ordinance which provided as follows:

> Section 1. It shall be unlawful for any person to distribute or carry for the purpose of distributing, or

> to post or carry for the purpose of displaying the same, any handbill or advertisement or advertising material of any kind within the city of Elgin without a license to do so.
>
> Section 13. No license shall be required hereunder for the purpose of advertising home entertainments or sales by citizens of the City of Elgin if the person desiring the same shall first obtain a permit from the mayor to do so.

In holding the ordinance invalid and reversing the conviction of the defendant in that case, a New York resident, the Court said:

> In our judgment, under the authorities, the ordinance is void as being discriminatory between residents and nonresidents as to the payment of license fees. A citizen of the city may procure a permit without the payment of a license fee, and distribute advertisements concerning sales by such citizens. Beyond question the ordinance permits local merchants to advertise by the distribution of circulars or pamphlets. A statute or ordinance which in imposing a license tax discriminates in favor of residents of a state or city and against non-residents of the same class is unconstitutional. (133 N.E. 205, 206)

In *Larson v. City of Rockford*, 371 Ill. 441, 21 N.E. 2d 396, the Supreme Court of Illinois had occasion to determine the validity of an ordinance of the City of Rockford which exacted license fees of persons maintaining and operating automatic vending machines for the sale of candy, peanuts, soft drinks, pop corn and gum. The ordinance required that persons to whom licenses were to be issued be either residents of the city or have a business address within the city. In holding that the ordinance was not discriminatory against nonresidents the Court said:

> The ordinance is not invalid because it requires licensees either to be residents of Rockford or to maintain a business address in that city. Arbitrary dis-

> crimination between residents and nonresidents in the issuance of licenses or fees charged will invalidate a municipal ordinance. (*City of Elgin* v. *Winchester*, 300 Ill. 214, 133 N.E. 205, 22 A.L.R. 1481), but the ordinance before us neither prohibits issuance of licenses to non-residents nor exacts a higher fee from non-residents than from residents. (21 N.E. 2d 396, 398)

The court went on to discuss the fact that a city could require a business address within the city for purpose of inspection and receiving customer complaints. It is thus seen that the Rockford ordinance was far different in its residence requirements than the ordinance before the Court in these cases.

Similar decisions are numerous. In *People* v. *Bowen*, 11 Misc. 2d 462, 179 N.Y.S. 2d 125, the Court of Special Sessions of the City of New York, Appellate Part, had before it the validity of a section of the New York City Administrative Code which prohibited the issuance of licenses for sightseeing guides unless the applicant had been a resident of New York City for two years. In reversing the conviction of the defendants who were residents of Pennsylvania and were conducting a tour which originated and terminated in Philadelphia, for acting as sightseeing guides without a license, the Court said:

> In *Wormser* v. *Moss*, 177 Misc. 49, 29 N.Y.S. 2d 798, the New York Supreme Court held that a law of the City of New York which restricted the granting of Masseur's licenses to persons who had been citizens of the United States for at least two years violated both the United States and the New York State Constitutions (U.S. Const. 14th Amend.; N.Y. Const. Art. 1, §§ 6, 11).
>
> In *Schrager* v. *City of Albany*, 197 Misc. 903, 99 N.Y.S. 2d 697, a city ordinance prohibited street vending without a license and only permitted the issuance of licenses to persons who had been residents of the

city for at least six months. The residence requirement was held to be manifestly unconstitutional and invalid since it works a discrimination against non-residents of the city * * *" (197 Misc. 903, at page 906, 99 N.Y.S. 2d 697, at page 700). The Court pointed out (197 Misc., page 906, 99 Misc. 2d page 700 "Regulations whose purposes are asserted to be in the public interest must be reasonable, adapted to cure a substantial evil and applicable to persons similarly situated. If they fail to meet those requirements courts have the duty to declare them unconstitutional."

Unless residence within a city presents a clear-cut reasonable basis for distinction between persons seeking to pursue the same occupation within the city, a requirement of residence as a prerequisite to practicing such occupation must fail. *Lang's Bakery* v. *City of Lockport*, 251 App. Div. 791, 298 N.Y.S. 167; *People* v. *Hervieux*, 134 Misc. 711, 236 N.Y.S. 129. Here we find no such basis; accordingly, we hold that the two years' residence requirement of Sec. B32-77.0 of the N. Y. City Administrative Code, as applied to these defendants, is invalid. *City of Watertown* v. *Rodenbaugh*, 112 App. Div. 723, 98 N.Y.S. 885. [175 N.Y.S. 2d 125, 127-128]

In *Jewel Tea Co. v. Town of Bel Air* (Md. Ct. of App. 1937) 192 A. 417 it was held that a court of equity could enjoin the enforcement of ordinances which prohibited unlicensed nonresidents from soliciting orders for sale of goods. The Court said:

Both ordinances, Nos. 39 and 74, are void because they discriminate in favor of the resident business, and thus violate the Fourteenth Amendment to the Federal Constitution. In support of such a decision it is only necessary to refer to the opinion of this court by Judge Offutt in *Havre De Grace* v. *Johnson*, 143 Md. 601, 123 A. 65, and the numerous cases digested in 61 A.L.R. 337. Discussion would be superfluous and repetitious.

In *Whipple v. City of South Milwaukee*, 261 N.W. 235, the Supreme Court of Wisconsin held invalid an ordinance of the City of South Milwaukee which in effect required a license to be obtained by hawkers and peddlers of non-resident businesses, in that case bakery and creamery firms. The ordinance did not require such a license of hawkers and peddlers of resident firms. The court went on at great length to analyze the various precedents but the following is indicative of the reasoning:

> Consequently, by reason of that exemption in favor of mercantile houses located in the city of South Milwaukee, the impediment or burden which it was proposed to impose by those prohibitory provisions upon the plaintiffs and others similarly situated, is not equally applicable to the pursuits of all engaged in the same acts under like circumstances and conditions. Therefore those provisions are discriminatory as against the plaintiffs and others similarly situated, and by reason of that discrimination, they are in violation of section 1, art. 1, Wis. Const., and section 1, Amend. 14, U. S. Const. By that amendment, as the court said in *Barbier v. Connolly*, 113 U.S. 27, 31, 5 S. Ct. 357, 359, 28 L. Ed. 923, it was "undoubtedly intended not only that there should be no arbitrary deprivation of life or liberty, or arbitrary spoilation of property, but that equal protection and security should be given to all under like circumstances in the enjoyment of their personal and civil rights": that, in respect thereto, "all persons should be equally entitled to pursue their happiness, and acquire and enjoy property," and "no impediment should be interposed to the pursuits of any one, except as applied to the same pursuits by others under like circumstances"; and that "no greater burdens should be laid upon one than are laid upon others in the same calling and condition." Likewise, with that amendment and section 1, art. 1, Wis. Const., in mind, we said, in *Christoph v. City of Chilton*, 205 Wis. 418, 421, 237 N.W. 134, 135: "That both the Constitutions of the state of Wis-

consin and of the United States condemn laws which grant special privileges to a favored class, cannot be doubted. That the very spirit of our institutions is against the granting of special privileges to a favored class is indeed elementary." And also that: "While the legislature, in proper cases, clearly has the right to classify persons, property, occupations, or industries, it must always be borne in mind that the equal protection of the laws is guaranteed, and that, if any classification made by a statute grants to one class rights or privileges which are denied to another class under the same or substantially similar conditions, it offends against the principle of equal protection of the law."

The next case which we wish to call to the attention of the court is *City of New Brunswick v. Zimmerman*, 3 Cir., 1935, 79 F 2d 428. In that case the City of New Brunswick had an ordinance regulating barbers which provided that no application for a license to conduct a barber shop could be considered unless the applicant had been a resident of the County of Middlesex for a period of one year immediately preceding the making of the application. The District Court enjoined the enforcement of the ordinance and the city appealed. The United States Circuit Court of Appeals affirmed the District Court saying:

> The Fourteenth Amendment provides that no state shall make or enforce any law which abridges the privileges or immunities of citizens of the United States, nor deny them equal protection of the laws. It is our conclusion that the ordinance requirement as to residence had but one purpose, namely, that of discriminating in favor of residents of the county of Middlesex and citizens of the state of New Jersey and against nonresidents of the county and citizens of other states. We conclude that the ordinance requirement of one year's residence as a prerequisite to the right to conduct a barber shop within the county of Middlesex, state of New Jersey, is unreasonable, dis-

criminatory, and in direct violation of the Fourteenth Amendment to the Constitution of the United States. *Williams v. McCartan*, (D.C.) 212 F. 345. [79 F. 2d 428, 429]

The last and probably the closest case on the facts, is the opinion mentioned in the *Jewel Tea Co.* case discussed above, *Mayor and City Council of Havre de Grace* v. *Johnson*, (Md. Ct. of App., 1927), 133 Atl. 65. Because of its importance in this case we take the liberty of quoting at length from that opinion:

> The single question presented by this appeal is whether ordinance No. 298 of the city of Havre de Grace is a valid enactment.
>
> The ordinance is entitled:
>
> "An ordinance to regulate, control, and restrict the use of the streets, lanes, and alleys of the city of Havre de Grace by automobiles carrying passengers for hire,"
>
> —and was approved on August 27, 1922. In part it provides:
>
> "Section 1. Be it enacted and ordained by the mayor and city council of Havre de Grace, Maryland, that it shall be unlawful for any driver or operator of an automobile carrying passengers for hire (except as hereinafter provided), to solicit or accept passengers for transportation for hire on any of the streets, lanes and alleys of the city of Havre de Grace, except Union avenue and Revolution street west Union avenue.
>
> "Sec. 2. Be it further enacted and ordained that the provisions of this ordinance shall not apply to the operators or drivers of automobiles who are actual and bona fide residents of the city of Havre de Grace, and who have resided therein for a continuous period of six months."

The complainant contends that the ordinance was and is void, because it is unconstitutional and that that being true the police officials of Havre de Grace in executing it threatened to deprive him of rights or privileges granted by the state to him for which he had fully paid. He contended that he had no adequate legal remedy for such loss as he might sustain as a result of the defendants' acts, and he therefore asked that they be restrained from—

"interfering with, arresting and fining your orator, his agents, servants and employees, from soliciting and accepting passengers for transporting for hire, in the three cars mentioned and referred to in this bill of complaint on any of the streets, lanes, and alleys of said city of Havre de Grace."

In their answer the defendants say:

"(1) That the defendant, the mayor and city Council of Havre de Grace, is a municipal corporation whose charter is codified as sections 276 to 402, inclusive, of chapter 680 of the Acts of 1916; that by the provisions of said charter the said city is empowered and charged with the duty of passing ordinances 'to protect and preserve the health of the citizens and the property rights and privileges of the city, and, for the preservation of peace and good order, securing persons and property from violence, danger or destruction; that ordinance numbered 298, referred to in the bill of complaint, was passed by said mayor and city council by virtue of and in pursuance of the authority contained in said charter.

"(2) That the said city of Havre de Grace has two principal thoroughfares running through said town, to wit, Union avenue and Washington street, the principal business section of said city being located on Washington street; that during the months of April and September of each year, while races are being conducted by the Harford Agriculture & Breeders' Association, at the race track near said city, there is a large transient population in said city; that,

during the months aforesaid, there also come to said city, from all parts of this and other states, a large number of irresponsible drivers of cars for hire; that before the passage of Ordinance No. 298 these cars would gather in the principal business section of Washington street in such numbers that said street would become practically closed to all other traffic, seriously interfering with the orderly progress of traffic in said street, and that, as the result of the keen competition among the drivers of said hiring cars, much disorder and rowdyism resulted, to the disturbance of the peace of the neighborhood and the annoyance of all the residents thereof; and that because of said condition said city was put to the expense of several additional officers in an effort to control the situation, but without result.

"(2½) That said ordinance was passed to correct the condition above set forth and for no other purpose."

They also deny that the ordinance is unconstitutional or void for any reason.

It was assumed at the hearing that the ordinance was adopted in the exercise of power conferred by the Legislature, Acts 1916, c. 680, "section" 308, and we will for the purpose of this opinion only, and without so deciding, also assume that the Legislature did delegate to the city of Havre de Grace the power to regulate the business of automobile hiring on the streets of Havre de Grace and that Ordinance No. 298 was adopted in the attempted exercise of that power, and will deal only with the reasonableness of that ordinance.

The first consideration suggested by an examination of the ordinance is that it is not a regulation at all, but a prohibition; the second is that it only excludes persons who reside beyond the corporate limits of Havre de Grace. Whether the municipality would under any circumstances have the right to absolutely

prohibit persons from accepting passengers for hire on its streets, as it has attempted in this ordinance to do, need not, in view of our conclusion upon the other question, be discussed. And the question is thus brought down to this: Did the ordinance unreasonably and unlawfully discriminate against the appellee and others in like situation by prohibiting them, and other persons not residing in Havre de Grace, from operating an automobile hiring business on certain streets of that town? In dealing with that question the learned judge who decided the case below said:

"The city of Havre de Grace is not a sovereign state, but is a part of Harford county, and its streets, lanes, and alleys are part of the public highways of the state of Maryland and open to all citizens of the state on equal terms for the purpose of travel; and, as the plaintiff is a citizen of Maryland, there is no necessity either to discuss or pass upon the rights of aliens or nonresidents in similar cases. When, however, these public highways are used for business purposes, such as that in which the plaintiff is engaged, different rules in some measure apply. The city, under its charter, has the right to pass proper ordinances to preserve order on the public highways, and to see that the legitimate use of the highways by the general public is not interfered with by persons seeking to use them for private purposes, and that, when used for business purposes, they are so used as not to disturb the public peace and comfort."

And with that reasoning we entirely agree.

It certainly cannot be seriously argued that an ordinance which forbids nonresidents of Havre de Grace from transacting on its streets the same business which they permit residents to transact there is a reasonable regulation designed in the interest of the public health or welfare, because we certainly cannot assume as a matter of law that the operation of an automobile hiring business by a nonresident of Havre de Grace would, because of his nonresidence, constitute

a greater peril to the health or welfare of that town than it would if operated by a resident; a more reasonable and probable view would be that it was intended to confer the monopoly of a profitable business upon residents of the town. But whatever its purpose may have been there can be no doubt but that the ordinance is discriminatory and unreasonable, and that the municipality had no power to adopt it.

* * *

It is undoubtedly true, as stated in *State* v. *Shapiro*, 131 Md. 171, 101 Atl. 795, Ann. Cas. 1918E, 196, that the state is not bound to observe a definite rule of uniformity in the enactment of license laws, so long as it —

"does not conflict with the constitutional right to the equal protection of the laws, or to due process of law, if the prescribed regulations operate equally and uniformly upon the class, and within the area affected, and their limitations are not clearly unreasonable."

But the converse is equally true that if a statute is unreasonable, or deprives persons affected by it of the equal protection of the law, it is void. And in this case we think the statute does have that effect.

The state licensed and authorized persons securing licenses under class E, § 141, art. 56, C. P. G. L. of Md., to engage in the business of hiring automobiles on any of the highways of the state, and expressly provided that the fee exacted for that license should be in lieu of all other taxes, fees, or charges except taxes upon the machines as personal property.

The ordinance, however, confines and restricts the right of exercising the privilege thus conferred on certain of the public streets and highways in Havre de Grace to residents of that city, and excludes all other members of the class, to wit, persons licensed under the provisions of section E from engaging in that business on such streets. Such a discrimination is in our opinion clearly unreasonable, and the ordinance is for that reason void.

For the reasons stated the order appealed from will be affirmed.

Order affirmed, with costs to the appellee.

Other authorities are numerous and are collected in 61 A.L.R. 337 and 112 A.L.R. 63. In view of the overwhelming weight of authority, the Chicago taxicab ordinance which prohibits the issuance of licenses to corporate applicants which do not have their principal place of business within the City of Chicago is void and the defendants who are drivers of a taxicab company which has its principal place of business outside the City of Chicago cannot be found guilty under the ordinance.

CONCLUSION.

For the foregoing reasons, this petition for a writ of certiorari should be granted.

Respectfully submitted,

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